



City of Seattle

Gregory J. Nickels, Mayor

Department of Planning and Development

Diane M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 3003536

Applicant Name: Todd Walton

Address of Proposal: 3600 3rd Avenue NW



SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Permit to install a minor communication utility (Clearwire) on an existing City Light transmission tower. The proposed two dish antennas and three panel antennas (three sectors, one antenna per sector) will be located 95 ft. above grade and the equipment cabinet will be located at grade. The proposal is located on city right of way. The existing minor communication utility will remain.

The following approvals are required:

Shoreline Substantial Development Permit - to allow a minor communication utility in the Urban General (UG) Shoreline Environment - SMC 23.60.780.

Shoreline Variance - to allow a minor communications utility to exceed the height limit in the Urban General (UG) Shoreline Environment - SMC 23.60.812.A.

SEPA DETERMINATION:

☒ EXEMPT ☐ DNS ☐ MDNS ☐ EIS

☐ DNS with conditions

☐ DNS involving non-exempt grading or demolition involving another agency with jurisdiction.

BACKGROUND DATA

Site Location and Description

The proposal site is located between the Burke Gilman Trail and the Lake Washington Ship Canal at approximately the westernmost point of the Fremont Canal Park. The lease parcel on which the site is located is currently developed with an approximately 150 foot tall City Light electrical transmission tower. An existing minor telecommunication facility is located on the transmission tower under MUP #9900802 which allowed the installation of three panel antennas and associated accessory electrical equipment cabinets. This lease parcel is located within the vacated Northern Railroad right-of-way (ROW) which is currently occupied by the Burke Gilman Trail. For the purposes of the Seattle Shoreline Master Program (SSMP) the proposal site is considered a waterfront lot. Specifically, pursuant to SMC 23.60.924, when a proposal site lies within a ROW and that ROW abuts upon the ordinary high water mark, a proposal site is treated as a waterfront lot for the purposes of determining appropriate uses and applicable development standards. Such is the case with this proposal site. However, the existing transmission tower and proposed antennas and associated equipment cabinets for the minor communication utility use will be located landward of the ordinary high water mark. At its closest point, the existing transmission tower is approximately fourteen feet from the Lake Washington Ship Canal. The site is located in a General Industrial 2 zone with a sixty five foot height limit (IG2 U/65) and in the Urban General (UG) shoreline environment with a thirty-five feet height limit.

Proposal Description

The applicant proposes to install a total of three panel antennas and two dish antennas mounted at a height not to exceed 95 feet above grade on a City of Seattle City Light utility pole. The proposal consists of three sectors, containing 1 antenna per sector. This requested height is deemed by the applicant to be the minimum necessary to provide service coverage to the area. The project also includes installation of an accessory electrical equipment cabinet located on an existing concrete pad beneath the transmission tower. The notice of application sent on January 19, 2006 advertised the antennas and dishes to be located at the 120 foot mark of the transmission tower. The 25-foot reduction in overall height does not substantially change the proposal.

Surrounding Area Description

Development in the vicinity consists primarily of commercial and industrial uses. In the immediate vicinity there appear to be very few water dependent commercial or industrial uses. The only exception being a small asphalt batch plant located to the northwest of the proposal site. The IG2 zone designation continues to the northwest and southeast of the site. North of the proposal site, on the north side of Northwest 36th Street, the IG2 zone designation gives way to the less intense Industrial Buffer (IB) zone designation. The UG shoreline environment continues to the northeast of the proposal site. Northwest of the proposal site the UG shoreline environment changes to an Urban Industrial (UI) shoreline environment. Vegetation in the vicinity consists of tall mature trees along the banks of the Lake Washington Ship Canal as well

as limited landscaping along the Burke Gilman Trail. The topography in the immediate vicinity is generally flat. However, topography in the general area is somewhat sloped. North of the proposal site the topography slopes upward toward Phinney Ridge. Similarly, south of the site, on the opposite side of the Ship Canal topography slopes upward toward Queen Anne Hill.

Public Comment

The application was deemed to be complete on November 9, 2005 and notice of application was sent on January 19, 2006. The 14 day public comment period ended on February 17, 2006. No public comments were received through the public notice process.

ANALYSIS – SHORELINE SUBSTANTIAL DEVELOPMENT

Section 23.60.030 of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads: “A *substantial development permit shall be issued only when the development of proposed is consistent with:*”

*The policies and procedures of Chapter 90.58 RCW;
The regulations of this Chapter; and
The provisions of Chapter 173-127 WAC.*

Chapter 90.58 RCW is known as the Shoreline Management Act of 1971. It is the policy of the State to provide for the management of the shorelines of the State by planning for and fostering all reasonable and appropriate uses. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the State and their aquatic life, while generally protecting public rights of navigation and corollary incidental rights. Permitted uses in the shorelines shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle and other jurisdictions with shorelines, adopted a local shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions.

The proposal is subject to the Shoreline Policies of the Seattle Shoreline Master Program (SMC) 23.60.004, because the site is located within the shoreline district and the cost of the project exceeds \$2,500. Minor communication utilities are permitted in the Urban General (UG) Shoreline Environment and IG2 U/65 zone. The proposed minor communication utility must meet the general standards of Subchapter XIV as well as be consistent with the policies and procedures outlined in RCW 90.58. Section 23.60.812.A sets forth height limits for the shoreline environment. The applicant has also requested a shoreline variance to the height limit as discussed below under “Shoreline Variance Analysis.”

In evaluating requests for substantial development permits, the Director must determine that the proposal meets the approval criteria set forth in SMC Section 23.60.030. Development standards of the shoreline environment and underlying zone must be considered, and a determination made as to any special requirements (shoreline conditional use, shoreline variance, or shoreline special use) or conditioning that is necessary to protect and enhance the shorelines area. In order to obtain a shoreline substantial development permit, the applicant must show that the proposal is consistent with the shoreline policies established in SMC Section 23.60.064, and meets the criteria and development standards for the shoreline environment in which the site is located; any applicable special approval criteria; general development standards; and the development standards for specific uses.

SSMP Subchapter XIV - Development Standards for UG Environment

Criteria and development standards for uses in the UG shoreline environment are established in SSMP Subchapter XIV, The Urban General Environment. This subchapter prescribes uses for upland and waterfront lots and development standards including lot coverage, view corridors, regulated public access and height limits. As previously indicated, the proposal site is classified as a waterfront lot and is located in an Urban General (UG) shoreline environment as designated by the Seattle Shoreline Master Program. The principal use currently existing on this waterfront lot is the approximate 150-foot tall Seattle City Light transmission tower. SSMP section 23.60.780 identifies this use as a utility service use which is permitted outright on waterfront lots in the UG shoreline environment. Minor Communication Utilities co-locating on a transmission tower are permitted outright in the UG shoreline environment.

With respect to development standards for lot coverage, view corridors and public access, because the panel and dish antennas and equipment cabinets will be located and contained within the development footprint of an existing transmission tower these standards as they relate to the proposal site will remain unaffected by the proposed development. However, with respect to development standards for height, special approval criteria apply. Specifically, the applicant proposes to site the antennas 95 feet above existing grade on an existing over height utility tower. SMC section 23.60.014 specifies that in the UG shoreline environment the lower of the height limits permitted by the shoreline environment and the underlying zone shall apply. The maximum height limit in the UG zone for all development not associated with water dependent uses is 35 feet. Consequently, the applicant is required to obtain a shoreline variance to exceed the maximum allowable height in addition to a shoreline substantial development permit. The analysis for shoreline variance approval follows.

SMC 23.60.152 - General Development Standards

The general development standards of SSMP 23.60.152 apply to all uses in all shoreline environments. The standards require that design and construction of all uses be conducted in an environmentally sound manner, consistent with the Shoreline Management Program and with best management practices for the specific use or activity.

The proposed project's design is consistent with the requirements of this section. To ensure that these standards are conformed to, the proponent will be required to notify contractors and subcontractors of these requirements as conditioned below.

WAC 173-27 and RCW 90.58

Washington Administrative Code (WAC) 173-27 establishes basic rules for the permit system to be adopted by local governments, pursuant to the language of RCW 90.58. It provides the framework for permits to be administered by local governments, including the time requirements of permits, revisions to permits, notice of application, format for permits, and provisions for review by the State's Department of Ecology (DOE). As the Seattle Shoreline Master Program has been approved by DOE, consistency with the criteria and procedures of Seattle Municipal Code 23.60 constitutes consistency with WAC 173-27 and RCW 90.58.

DECISION – SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

This application to install panel and dish antennas on a City Light transmission tower is **APPROVED**.

ANALYSIS – SHORELINE VARIANCE

Pursuant to SMC section 23.60.036 and WAC 173-27-170, no shoreline variance shall be approved unless all of the following facts and conditions are found to exist. The findings that follow are based on information provided by the applicant and review of the proposal by the Land Use Planner.

1. *That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;*

Unlike other commercial and utility uses, the effectiveness of wireless communications utilities is limited by physical constraints in both the immediate vicinity and in the general area. Specifically, telecommunications utilities require a "line of sight" signal between customer and antenna. Consequently, buildings, trees and topography can interfere with signals thus limiting the usefulness of the utility. Due to the nature of physical constraints in the vicinity of the proposal site and in the general area, strict application of height limit would preclude reasonable use of the property as a minor telecommunication utility.

2. *That the hardship described in WAC 173-27-170(2)(a) above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions.*

The proposal site is currently characterized by multiple unique conditions. In the immediate vicinity of the proposal site trees along the Lake Washington Ship Canal shoreline present potential obstacles to "line of sight" signals. Thus, the antennas must be located on the tower at a height at which interference can be avoided. Similarly, sloping topography in the general area further limits the location of the antennas on the tower to a height at which these obstacles can be

overcome. Additionally, current development of the site as a legally non-conforming over height transmission tower enables the applicant to site the proposed antennas at a height at which obstacles in the vicinity may be overcome while not expanding the extent of the existing legal non-conformity.

3. *That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment.*

The proposal site and vicinity are designated as Industrial on the City of Seattle Future Land Use Map and are currently developed with industrial and commercial uses. The siting of the proposed antennas and dishes and equipment cabinet within the structure envelope of an existing utility service tower is consistent with existing commercial and industrial uses in the area and will be consistent with future industrial uses which may be sited near the proposal site. Moreover, the siting and proposed height and bulk will not add to adverse aesthetic impacts to the shoreline environment already associated with the utility corridor.

4. *That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area.*

Approval of the variance does not constitute a grant of special privilege. The applicant is not proposing that an over height structure, such as a monopole, be constructed. Rather, the applicant is proposing that antennas be mounted on a site containing the unique condition of an existing over height structure.

5. *That the variance requested is the minimum necessary to afford relief.*

The applicant proposes to site the antennas on the tower at a height such that a “line of site” signal can overcome physical and topographical obstacles in the vicinity as well as in the general area. The proposed height is the minimum necessary to overcome these obstacles. The proposal will not substantially add to the height and bulk of the existing transmission tower.

6. *That the public interest will suffer no substantial detrimental effect.*

The siting and design of the antennas and associated equipment cabinets will not interfere with public access to the shoreline or otherwise limit enjoyment by the public. Specifically, no views will be substantially altered by the location of the antennas nor will access to the shoreline be blocked by the fenced equipment cabinets located at existing grade.

DECISION – SHORELINE VARIANCE

This application to install panel and dish antennas on a City Light transmission tower is **APPROVED**.

**CONDITIONS - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT &
SHORELINE VARIANCE**

1. The panel and dish antennas and portions of the array support structure presenting a profile shall be painted to match the color of the structure.
2. Care shall be taken by the owner(s), builder(s), or responsible party(ies) to prevent debris from entering the water during demolition and construction and to remove debris promptly if it does enter the water. Materials and construction methods shall be used which prevent toxic materials, petrochemicals and other pollutants from entering surface water during and after construction.

Signature: (signature on file)
Mark Taylor, Land Use Planner
Department of Planning and Development

Date: July 10, 2006